#### **SOUTHERN CALIFORNIA**



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Orange County Transportation Authority: Lou Correa, County of Orange

Riverside County Transportation Commission: Robin Lowe, Hemet

Ventura County Transportation Commission: Keith Millhouse, Moorpark

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559-8/15/05

### **MEETING OF THE**

# ENERGY & ENVIRONMENT COMMITTEE

Please Note Change In Time Thursday, December 1, 2005 10:00 a.m. – 11:45 a.m.

SCAG Offices 818 West 7<sup>th</sup> Street, 12<sup>th</sup> Floor Conference Room Riverside A Los Angeles, CA 90017 213.236.1800

If members of the public wish to review the attachments or have any questions on any of the agenda items, please contact Deby Salcido at 213.236.1993 or <a href="mailto:salcido@scag.ca.gov">salcido@scag.ca.gov</a>

Agendas and Minutes for the Energy & Environment Committee are also available at:

www.scag.ca.gov/committees/eec.htm

SCAG, in accordance with the Americans with Disabilities Act (ADA), will accommodate persons who require a modification of accommodation in order to participate in this meeting. If you require such assistance, please contact SCAG at (213) 236-1868 at least 72 hours in advance of the meeting to enable SCAG to make reasonable arrangements. To request documents related to this document in an alternative format, please contact (213) 236-1868.



# ENERGY & ENVIRONMENT COMMITTEE

# AGENDA

PAGE #

TIME

"Any item listed on the agenda (action or information) may be acted upon at the discretion of the Committee".

#### 1.0 <u>CALL TO ORDER & PLEDGE OF</u> <u>ALLEGIANCE</u>

Hon. Dennis Washburn, Chair

#### 2.0 PUBLIC COMMENT PERIOD

Members of the public desiring to speak on an agenda item or items not on the agenda, but within the purview of the Committee, must fill out and present a speaker's card to the Assistant prior to speaking. A speaker's card must be turned in before the meeting is called to order. Comments will be limited to three minutes. The chair may limit the total time for all comments to twenty (20) minutes.

#### 3.0 REVIEW and PRIORITIZE AGENDA ITEMS

#### 4.0 CONSENT CALENDAR

#### 4.1 Approval Item

4.1.1 Approve Minutes of November 3, 2005
Attachment

4.1.2 2006 State and Federal Legislative Program

01

05

19

**Attachment** 

#### 5.0 ACTION ITEMS

5.1 <u>Pomona Inland Valley Partnership Program</u>
Attachment

Jennifer Brost SCAG Staff 10 Minutes

Staff will present a proposed energy efficient partnership between SCAG, SCE, and Intergy Corporation.

**Recommended Action:** Approve continued discussions between SCAG, SCE, and Intergy Corp.



# ENERGY & ENVIRONMENT COMMITTEE

# AGENDA

|     | •  |                                | PAGE # | TIME       |
|-----|--|--------------------------------|--------|------------|
| 5.2 | S1607, Solid Waste on Railroad Properties Attachment   | Jacob Lieb<br>SCAG Staff       | 23     | 10 Minutes |
|     | The Solid Waste Task Force recommends support of federal legislation to clarify jurisdiction of solid waste facilities on railroad properties. |                                |        |            |
|     | Recommended Action: Support Solid Waste Environmental Regulation/Railroads S1607/HR 3577   |                                |        |            |
| 5.3 | "Underground Rulemaking" Program Attachment  | Jacob Lieb<br>SCAG Staff       | 37     | 10 Minutes |
|     | The Solid Waste Task Force recommends support for legislation to clarify the Administrative Procedures Act regarding "underground rulemaking." |                                |        |            |
|     | Recommended Action: Support legislation to clarify "underground rulemaking."   | n                              |        |            |
| 5.4 | Ahwahnee Water Principles for Resource Efficient Land Use Attachment   | Daniel E. Griset<br>SCAG Staff | 48     | 10 Minutes |
|     | The Water Policy Task Force recommends support of the Ahwannee Water Principles for Resource Efficient Land Use.                               |                                |        |            |
|     | Recommended Action: Approve Resolution 06-469-2 in support of the Ahwannee Water Principles for Resource Efficient Land Use.                   | er                             |        |            |



# ENERGY & ENVIRONMENT COMMITTEE

# AGENDA

|             |   |                                | PAGE #     | TIME       |
|-------------|---|--------------------------------|------------|------------|
| 5.5         | Conformity Determination and EIR Addendum for the Draft RTP/RTIP Amendment Attachment   | Jessica Kirchner<br>SCAG Staff | 52         | 15 Minutes |
|             | The Draft 2004 RTP/RTIP Amendment modifies two projects in Orange County: The CenterLine light rail and the SR-241 Foothill-South toll road. (TCC is considering release of the Draft Amendment.) |                                |            |            |
|             | Recommended Action: Release for public review and comment the conformity determination and PEIR Addendum for the Draft 2004 RTP/RTIP Amendment.   |                                |            |            |
| 5.6         | Proposed Energy Summit Attachment   | Jennifer Brost<br>SCAG Staff   | 54         | 10 Minutes |
|             | To assist in the development of the RCP Energy Chapter, SCAG staff is requesting approval to plan an Energy Summit to be held in early 2006.  | SCAG Staff                     |            |            |
|             | <b>Recommended Action:</b> Approve staff's involvement in organizing an Energy Summit in 2006.  |                                |            |            |
| <u>INFO</u> | RMATION ITEMS   |                                |            |            |
| WAT         | ER POLICY TASK FORCE REPORT   | Hon. Dennis<br>Washburn, Chair | r          |            |
| SOLI        | D WASTE TASK FORCE REPORT   | Hon. Toni Young<br>Chair       | <b>5</b> , |            |
| sol         | UTHERN CALIFORNIA iii   |                                |            |            |



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# ENERGY & ENVIRONMENT COMMITTEE

# AGENDA

PAGE #

TIME

9.0 CHAIR'S REPORT

Hon. Dennis Washburn, Chair

10.0 STAFF REPORT

Sylvia Patsaouras, SCAG Staff

#### 11.0 FUTURE AGENDA ITEMS

Any Committee members or staff desiring to place items on a future agenda may make such request. Comments should be limited to three (3) minutes.

#### 12.0 ANNOUNCEMENTS

#### 13.0 ADJOURNMENT

The next meeting of the Energy and Environment Committee will be held in January 5, 2006, at the SCAG Office.



#### Action Minutes

# THE FOLLOWING MINUTES ARE A SUMMARY OF ACTIONS TAKEN BY THE ENERGY AND ENVIRONMENT COMMITTEE. AUDIO CASSETTE TAPE OF THE ACTUAL MEETING IS AVAILABLE FOR LISTENING IN SCAG'S OFFICE.

The Energy and Environment Committee held its meeting at the Southern California Association of Governments, downtown Los Angeles. The meeting was called to order by Dennis Washburn, Vice-Chair. There was a quorum.

#### **Members Present**

Bertone, Denis SGVCOG
Carrillo, Victor City of Imperial

Carroll, Stanley City of La Habra Heights

Clark, Margaret City of Rosemead

Cook, Debbie City of Huntington Beach

Forester, Larry
King, Dorothy
Nelson, Larry
City of Signal Hill
Gateway Cities COG
City of Artesia

Van Arsdale, Lori
Washburn, Dennis (Chair)

Young, Toni

City of Artesia
City of Hemet
City of Calabasas
City of Port Hueneme

#### **Members Not Present**

Brennan, Brian VCOG

Campbell, Todd

Eckenrode, Norman

Hanks, Keith

City of Placentia

City of Azusa

City of Redlands

Marchand, Paul

Miller, Mike

City of Cathedral City

City of West Covina

Portantino, Anthony City of La Canada/Flintridge

Streator, Joyce City of Pasadena

Zerunyan, Frank SBCCOB

#### 1.0 CALL TO ORDER & PLEDGE OF ALLEGIENCE

Hon. Dennis Washburn, Chair, called the meeting to order at 9:55 a.m. The pledge of allegiance will be done at the Regional Council meeting.

#### 2.0 PUBLIC COMMENT PERIOD

No public comment.

#### 3.0 REVIEW and PRIORITIZE AGENDA ITEMS

#### Action Minutes

#### 4.0 CONSENT CALENDAR

It was MOVED (Larry Forester), SECONDED (Toni Young) and UNANIMOUSLY agreed to approve the Consent Calendar.

#### 4.1 **Approval Items**

4.1.1 Action Minutes of October 10, 2005

#### 4.2 Receive and File

4.2.1 State and Federal Legislative Matrix

#### 5.0 ACTION ITEMS

#### 5.1 Draft Fine Particle (PM2.5) Conformity Determination

Ted Harris, SCAG Staff, presented a report on the item. He clarified that the release of the draft for review would be for a period up to 60 days.

It was MOVED (Toni Young), SECONDED (Denis Bertone), and UNANIMOUSLY APPROVED to release the draft conformity determination for up to a 60 day public review.

#### 5.2 Draft 2006 State and Federal Legislative Program

Sarah Adams, SCAG Staff, reported that this program is identical, as it relates to energy and the environment, to the 2005 program, because we are in the middle both at the State and Federal levels of the Congressional and Legislative cycles. This means that we will go into 2006 and pick up the same business we dealt with in 2005.

Toni Young requested the following changes:

Page 21, under "Waste Management", 1<sup>st</sup> line, delete "transformation or".

Under "Monitoring", add bullet – "Track Federal Legislation regarding Solid Waste"

Dennis Washburn, Chair, suggested that this item be brought back to the next meeting on the Consent Calendar for approval and to the Regional Council for approval the same day.

#### Action Minutes

It was MOVED (Denis Berton), SECONDED (Larry Forester) and UNANIMOUSLY APPROVED to accept the Chair's recommendation with the noted changes.

#### 5.3 Energy Working Group

Jennifer Brost, SCAG Staff, reported on the proposed membership list for the Energy Working Group.

Debbie Cook asked that Ron Kennedy of Sharp Solar of Huntington Beach be contacted to participate and Lori Van Arsdale volunteered to sit on the group.

It was MOVED (Toni Young), SECONDED (Lori Van Arsdale) and UNANIMOUSLY AGREED to authorize staff to make the contacts and develop the Energy Working Group.

#### 6.0 INFORMATION ITEMS

Toni Young informed the Committee that she has had contact with persons who have created an "all electric" car and it will be available to look at in the P1 parking lot today.

Sylvia Patsaouras, SCAG Staff, reported that CALSTART is having its annual convention on Dec 1st at the Los Angeles Convention Center and asked if anyone is interested in attending to let her know.

#### 7.0 WATER POLICY TASK FORCE REPORT

Dennis Washburn, Chair, informed the group that there will be a field trip on November 10, 2005, from 10:00 a.m. -1:00 p.m., at the Inland Empire Utilities Agency at 6075 Kimbell Avenue in Chino.

#### 8.0 SOLID WASTE TASK FORCE REPORT

Toni Young, reported that the task force met on September 22 and October 25 and it reviewed the preliminary draft of the RCP Solid Waste Chapter and will work with staff and the Waste Board on refinements. The task force has also been reviewing legislative issues and anticipates bringing forward 2 items for EEC action next month, they include "Underground Rulemaking" and "Solid Waste Facilities on Railroad Properties".

#### 9.0 CHAIR'S REPORT

None

#### Action Minutes

#### 0.0 CHAIR'S REPORT

None

#### 10.0 STAFF REPORT

None

#### 11.0 FUTURE AGENDA ITEMS

#### 12.0 ANNOUNCEMENTS

The Subregional/Regional Relations Task Force will have a kickoff meeting immediately following the Regional Council meeting on Dec 1.

#### 13.0 ADJOURNMENT

There being no further business, Dennis Washburn, Chair, adjourned the meeting at 10:25 a.m. The next meeting of the Energy and Environment Committee will be held at the SCAG office on December 1.

Action Minutes Approved by:

Sylvia Patsaouras, Staff Energy and Environment

DATE:

December 1, 2005

TO:

The Energy and Environment Committee (EEC)

FROM:

Charlotte Pienkos, Government Affairs Analyst

Phone: (213) 236-1811

SUBJECT:

2006 State and Federal Legislative Program

EXECUTIVE DIRECTOR'S APPROVAL

**RECOMMENDED ACTION:** Approve the 2006 State and Federal Legislative Program

#### SUMMARY:

The 2006 State and Federal Legislative Program is adopted annually by the Regional Council following approval by the policy committees. A draft legislative program was reviewed by the EEC in November. The Committee requested a few clarifications and additions in the areas of CEQA reform and environmental streamlining, solid waste, and water. Those changes have been made and are noted in the attached legislative program. Staff recommends approval. The Regional Council is scheduled to consider the legislative program at its meeting today. If adopted, the legislative program will be implemented in January at the beginning of the 2006 state and federal legislative sessions.

#### **BACKGROUND:**

The EEC, at its November meeting, considered the 2006 State and Federal Legislative Program. A new legislative program is contemplated every year in anticipation of the upcoming legislative sessions in Sacramento and Washington. This year's program contained few modifications and strongly resembled the 2005 program because 2006 marks the mid-point of the two-year legislative cycle, and broad policy changes are not contemplated at this time.

The EEC did not approve the legislative program but asked to have it brought back as a consent calendar approval item when their requests for changes had been made. Specifically, the Committee requested 1) clarification of the environmental streamlining section; 2) the removal of "transformation" from the item that references SCAG's support of AB 1090 (Matthews) and conversion technologies; 3) the addition of an item monitoring federal legislation on solid waste; and 4) the relocation of two water items on stormwater, non-point source pollution and total maximum daily loads (TMDLs) from the *Monitoring* section to the *Advocacy* section. The requested clarifications and changes have been made. They are highlighted in the attached legislative program with explanatory remarks appearing in the bubbles along the right margin.

In regard to the Committee's fourth point, Government Affairs staff consulted with Planning and Policy staff and together they crafted the item which is highlighted in the program. It is broad

enough to permit advocacy on stormwater, non-point source pollution and TMDLs, among other topics, while reflecting the Committee's commitment to comprehensive planning.

Lastly, to clarify the CEQA reform/environmental streamlining section: On July 7<sup>th</sup>, the Regional Council approved a policy to direct SCAG's participation in on-going CEQA reform discussions. The guiding principles of the policy state that CEQA reform should:

- Ease the development of housing in appropriate, strategic locations (e.g. urban infill and transit oriented areas);
- Pursue environmental outcomes that are preferable to current conditions or "no-plan" future scenarios;
- Ensure that CEQA is used as intended rather than abused in order to stop/delay good projects;
- Promote regional planning; and
- Address a number of environmental impacts at the regional, rather than project, scale.

Additionally, the Regional Council stipulated the any CEQA procedure created through legislation should contain the following limitations:

- The program must be implemented voluntarily at the local level;
- The regional analysis, combined with the streamlined in-fill EIR, should form the functional equivalent of an EIR; and
- The program must be limited geographically to specific locations identified in the regional growth plan, known as the 2% areas.

Staff has encapsulated these adopted principles in the revised CEQA Reform/Environmental Streamlining section.

FISCAL IMPACT:

Because the SCAG fiscal year runs from July 1<sup>st</sup> through June 30<sup>th</sup>, while the legislative year runs from January 1<sup>st</sup> through December 31<sup>st</sup>, each SCAG budget covers the last half of the previous legislative session and the first half of the upcoming legislative session. The cost of adopting the recommended action is covered by the FY05-06 SCAG budget for the first half of the 2006 legislation session and requires no additional resources. No funds will be spent to implement the 2006 State and Federal Legislative Program from July 1<sup>st</sup> through December 31<sup>st</sup> without the approval of the FY06-07 SCAG budget.

CP#115958



# THE SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS (SCAG) 2006 STATE AND FEDERAL LEGISLATIVE PROGRAM

#### INTRODUCTION

Each year, the Regional Council adopts a state and federal legislative program to direct SCAG's legislative activities. The 2006 Legislative Program, which contains highlights from 2005, will guide SCAG's legislative activities in the coming year.

As in past years, SCAG legislative staff will continue to take action on Regional Council policies where they exist and will communicate Regional Council positions to legislators, administrators and others. SCAG legislative staff will also undertake new initiatives as they arise at the direction of the Regional Council.

SCAG's top federal legislative priority in 2006 is the amendment and fair implementation of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 (SAFETEA-LU), the nation's surface transportation program. SCAG will also continue to advocate innovative financing and public/private partnerships for transportation projects, AIR-21, and improved pre-deployment planning in the Transportation Infrastructure Finance and Innovation Act (TIFIA).

On the state level, SCAG will focus on the ongoing, collaborative efforts to protect Proposition 42 revenues from reallocation to the state's General Fund. SCAG will also advocate innovative financing and public/private partnerships for transportation projects and design-build and design-sequencing legislation to expedite project delivery.

In the area of housing and land use, SCAG will continue its collaboration with the Legislature, the Governor, and housing stakeholders to develop and support initiatives that permit local governments and regions to plan for the provision of a 20-year site inventory and allow neighboring jurisdictions to share responsibilities for increasing the housing supply. California Environmental Quality Act (CEQA) reform will also remain a related, top priority.

The 2006 Legislative Program will continue to further the Compass Implementation Framework, which was approved by the Regional Council in June 2004. This framework, or 2% Strategy, is guided by four key principles—mobility, livability, prosperity and sustainability—and addresses the challenges associated with future growth in the SCAG region. Because the 2% Strategy is interdisciplinary, its ideas are incorporated throughout the transportation, housing, growth and land use, habitat and open space, and sustainability sections of the 2006 Legislative Program and are marked with a <sup>2%</sup> symbol.

Upon its adoption by the Regional Council, SCAG's legislative staff will implement the 2006 Legislative Program. The timeframe for implementation is the 2006 calendar year. The 2006 Legislative Program is outlined following the 2005 program highlights.

2006 State and Federal Legislative Program CP#104152v.11

#### 2005 PROGRAM HIGHLIGHTS

#### **Federal Issues**

After 12 extensions and 3 years of debate, SAFETEA-LU was passed by Congress on July 29, 2005 and subsequently signed by President Bush on August 10, 2005. The bill operates from August 10, 2005 through September 30, 2009, authorizes \$286.4 billion in funding, including \$52.6 billion for transit programs, and includes more than 6,300 earmarked projects.

Of the 6,300 earmarks nationwide, the SCAG region received approximately 310 earmarks totaling \$1.4 billion. \$916 million of those earmarks will fund projects featured in the Southern California Consensus Program, a collaborative effort led for the last three years by SCAG and joined by:

- Los Angeles County Metropolitan Transportation Authority
- Orange County Transportation Authority
- Ventura County Transportation Commission
- Riverside County Transportation Commission
- San Bernardino Associated Governments
- Imperial Valley Associated Governments
- Southern California Regional Rail Authority

Consensus Program projects receiving funding include:

- Alameda Corridor East grade separation improvements: \$178,640,000
- Desmond Bridge expansion: \$100,000,000
- I-405 high-occupancy vehicle lane (HOV) improvements: \$130,000,000
- Eastside Light Rail: \$399,520,000
- Los Angeles Metro Gold Line extension: \$15,040,000
- SR-78/Brawley Bypass: \$7,600,000

In trips to Washington, the Consensus Program delegation emphasized that the bottleneck at the Ports of Long Beach and Los Angeles negatively impacts the economy and quality of life of both Southern Californians and the nation. The delegation was instrumental in the creation of several new provisions in SAFETEA-LU designed to address this and other transportation challenges:

- Projects of Regional and National Significance for 25 projects nationally up to \$1.7
   billion
- Private activity bonds or "exempt facility bonds" up to \$15 billion nationally
- A public-private partnership pilot program for up to 3 new fixed guideway capital projects
- Design-build contracting that eliminate the \$50 million threshold for contract size and allows a design-build contractor to become involved during the NEPA project definition phase

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 A value pricing pilot program to collect tolls on new interstate construction and the interstate construction pilot program to permit tolls on interstate highways to fund construction of new lanes/highways.

SCAG also succeeded in SAFETEA-LU in improving the reimbursement process for metropolitan planning organizations, ensuring repayment within 30 days of invoice.

#### **State Issues**

SCAG worked throughout the 2005 session to influence the enactment of new laws and the amendment of existing laws in the areas of housing, transportation, and the environment. SCAG continued its participation in the Housing Element Working Group (HEWG), in which discussions were conducted over many months in an effort to improve the housing approval process and to identify new sources of funding that cities need to pay for local services and infrastructure. These reform discussions will continue in 2006.

Related to the subject of housing reform was the Administration's decision to allocate \$5 million in State Planning and Research (SP&R) funds to regional blueprint planning and reimbursement for mandated work on the Regional Housing Needs Assessment. Although the Governor ultimately vetoed the use of SP&R funds for RHNA, an administrative solution is expected that will assist SCAG in the performance of the mandate. SCAG has also submitted a \$2.4 million application for regional blueprint planning funds.

Thanks to the advocacy of SCAG and transportation stakeholders statewide, the Legislature passed and the Governor signed an FY05-06 State Budget that fully funded Proposition 42 to the amount of \$1.3 billion. The full funding of Proposition 42 was a major legislative success; more work remains to be done, however, to amend the State Constitution to prohibit future suspensions of transfers from the General Fund to transportation projects and programs in times of financial crisis.

SCAG also advocated actively on behalf of GoCalifornia, the Governor's transportation package, which included AB 850 (Canciamilla) on public/private partnerships. In the last days of the session, SCAG was asked by the administration to submit technical amendments on AB 850 and did after circulating them among the commissions and AAA. Although the recommendations were not amended into AB 850 due to an impasse between the Governor and Senate President Pro Tempore Perata, the administration may use SCAG's ideas as the basis for 2006 negotiations.

Lastly, SCAG participated in the 2005 CEQA Working Group. Among members of the group, there were commonly held beliefs on streamlining and the exercise of CEQA within streamlined alternatives. No specific, detailed proposal on CEQA streamlining emerged in the session, however, and the effort will continue in 2006.

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#### 2006 LEGISLATIVE PROGRAM

The SCAG 2006 Legislative Program describes Regional Council federal and state legislative and administrative priorities that SCAG will pursue during the coming year. The 2006 program is a continuation of last year's program, which included the input of our state and regional planning partners like the California Association of Councils of Government (CALCOG) and the county transportation commissions.

Throughout this section, issues are categorized by subject matter (e.g., Housing, Air Quality) and are grouped into one of three subcategories: Advocacy, Monitoring, or Development.

Issues subcategorized under *Advocacy* are of foremost concern to the Regional Council and will be advocated by SCAG. Issues subcategorized under *Monitoring* are of interest to the Regional Council and will be tracked by SCAG; policy committees and the Regional Council will be alerted to relevant proposed changes in those areas. Issues included under the subcategory *Development* are those in which the Regional Council or its policy committees have asked SCAG staff to further develop ideas, to begin or continue efforts, or to provide more information. They are inventoried here for the Regional Council's information and should not be read as requests for federal or state legislative or administrative action.

#### **SCAG**

#### Roles and Leadership

Working in coordination with the county transportation commissions, Metrolink, and local transportation agencies, SCAG will pursue the following advocacy goals.

#### Advocacy

- Provide regional leadership in seeking federal and state funding for projects and programs that implement SCAG's adopted 2004 RTP and 2004 RTIP and in advocating for projects needed to maintain air quality conformity in the SCAG region.
- Coordinate advocacy efforts to advance the Southern California Consensus Program and continue consensus building among local transportation commissions, cities, counties, and subregional organizations.
- Advocate federal legislation that facilitates the ability of metropolitan planning organizations (MPOs) to fulfill their roles and responsibilities.
- Advocate state legislation that facilitates the ability of regional transportation planning agencies (RTPAs) and councils of governments (COGs) to fulfill their roles and responsibilities.

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- Advocate a stronger role for regions and MPOs in planning for America's global economic competitiveness.
- With the interstate highway system nearing completion, participate in a national discussion about the role of the federal government in transportation planning and funding to ensure effective participation by the United States in the global economy.

#### **Homeland Security**

#### Development

- Serve as a forum where operations and plans can be discussed and coordinated.
- In coordination with local agencies and other stakeholders, engage as an MPO in a more active role in security and disaster planning.

#### Tribal Governments

#### Development

 Based on the adopted tribal governments work plan, and with their consent and assistance, offer state legislation if necessary providing that federally recognized tribal governments in the SCAG region are government entities for the limited purpose of participating in the SCAG joint powers authority.

#### **TRANSPORTATION**

#### SAFETEA-LU

#### Advocacy

- Advocate amendments necessary to refine SAFETEA-LU's provisions regarding, among other issues, diesel retrofitting in the Congestion Mitigation Air Quality Program (CMAQ).
- Advocate implementation procedures that are favorable to the SCAG region in the SAFETEA-LU rulemaking process.

#### Development

 Continue Southern California Consensus Program consensus-building meetings, visits, and outreach with Members of Congress, state and federal administration officials, the county transportation commissions, cities, counties, subregional organizations and key stakeholders. Comment [p1]: This item has been added to further the tribes' abilities to participate in SCAG, per the adopted Ten Year Strategic Plan and in furtherance of the adopted tribal governments work plan.

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#### **Appropriations**

#### Advocacy

- Advocate congressional support for SCAG's FY 2007 appropriations requests as approved by the Regional Council.
- Advocate appropriations for projects contained in the Southern California Consensus Program.
- Support earmarks or discretionary funding applications of jurisdictions within the SCAG region consistent with the Southern California Consensus Program, the adopted 2004 RTP, the adopted 2004 RTIP and SCAG policies.

#### Maglev

#### Advocacy

- Advocate predeployment planning and environmental review funding for the California Maglev Deployment Program.
- Seek FY 2007 appropriations to continue predeployment planning and environmental review.
- Seek federal, state and local funds and policy maker and community support to complete predeployment planning and environmental review for the Initial Operating System (IOS) stated for completion by 2018.

#### Aviation

#### Advocacy

- Support legislation to promote and implement a decentralized aviation system including interconnecting high-speed ground transportation.
- Advocate regional airport systems and improved ground access program funding in the reauthorization of the Aviation Investment and Reform Act for the 21st Century (AIR-21).

#### **Transportation Financing**

#### Advocacy

- Advocate a constitutional amendment to protect Proposition 42 revenues from reallocation to the state's General Fund.
- Advocate addressing the allocation of the state's transportation funds to ensure an equitable distribution throughout the state.

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- Support design-build and design-sequencing procurement procedures to expedite project delivery.
- Support local ballot initiatives to fund local transportation projects with local sales tax measures.
- Support legislation that promotes the use of public/private partnerships and other innovative financing mechanisms.

#### Development

- Continue face-to-face discussions with state and federal legislators from the region about Southern California's long-term transportation requirements and the funding options needed to address these requirements.
- Participate in the development of revenue mechanisms and strategies to finance major regional projects contained in the adopted 2004 RTP, including proposals to increase transportation funding through user fees and sales taxes on motor vehicle fuels and by adjusting the fuel excise tax rate to maintain historical purchasing power.
- Participate in the development of innovative financing proposals such as tax credit bonds, tax credit equity, tax-exempt bonds, TIFIA grants and TIFIA loans repaid with project-generated revenues.
- Expand consensus building and outreach efforts to the general public to educate regional residents about the unmet cost of the adopted 2004 RTP.
- Evaluate the merits of a regional gas tax/user fee measure and the institutional framework necessary to implement and manage it.

#### **Goods Movement**

#### Advocacy

- Support efforts of the West Coast Corridor Coalition to improve goods movement and reduce congestion along the I-5 from Vancouver, B.C. to Ensenada, Mexico.
- Urge the state and federal government to take action to limit the mobile source emissions arising from goods movement.
- Support regional efforts underway by transportation agencies that develop goods
  movement projects through the use of financing concepts including user fees and
  other revenue generating mechanisms to service debt instruments.

Development

2006 State and Federal Legislative Program CP#104152v.11

 With the participation and input of the county transportation commissions, Metrolink, and local agencies, develop the concept of user-supported dedicated facilities that offer a viable and potentially self-financing solution for mitigating congestion, reduce mobile source emissions arising from goods movement in Southern California, and ensure the safe and efficient movement of goods essential to the nation's economy.

#### **Southwest Compact**

#### Advocacy

 Advocate legislation that corresponds with SCAG's ongoing efforts to develop the Southwest Passage, a multi-state goods movement trade corridor along the I-10, and the Southwest Compact, a coalition of states sharing goods movement and economic development interests.

#### COMMUNITY, ECONOMIC AND HUMAN DEVELOPMENT

#### Housing

#### Advocacy

- Working with the administration, develop a state-funded reimbursement program for the Regional Housing Needs Assessment (RHNA) mandate at the regional and subregional levels.
- Working with housing and CEQA task forces conducted by the Legislature and the
  administration and with other housing stakeholders, develop and support legislation
  that redefines the local and regional responsibilities in implementing state housing
  goals in a manner favorable to local governments and the region.
- Support initiatives that call for local governments and regions to plan for the
  provision of a 20-year site inventory, based on natural increases in population and job
  growth, and that allow neighboring jurisdictions to share responsibilities for
  increasing the housing supply.
- Advocate the use of state and federal funding to incentivize jobs/housing balance, infrastructure, and environmental mitigation programs in local jurisdictions <sup>2%</sup>.
- Encourage the U.S. Department of Housing and Urban Development's participation in the development of housing strategies with the U.S. Department of Transportation.

#### Growth and Land Use

#### Advocacy

 Support federal and state funding initiatives designed to promote mixed-use and multi-modal development <sup>2%</sup>.

Development

2006 State and Federal Legislative Program CP#104152v.11

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Comment [p2]: "... In a manner favorable to local governments and the region" added at the request of the CEHD.

- Participate in the development of legislation related to the jobs-housing balance including, but not limited to, CALCOG growth policies, construction defect litigation and water availability <sup>2%</sup>.
- Encourage cities and counties to adopt land use policies that help the SCAG region achieve air quality conformity and transportation system performance <sup>2%</sup>.
- Foster a dialogue with the education community about addressing the physical needs
  of schools in relationship to SCAG's growth and land use policies.

#### CEOA Reform and Environmental Streamlining

#### Advocacy

- Support CEQA reform that, when implemented voluntarily at the local level, promotes regional planning and eases the development of housing in appropriate, strategic locations identified in the regional growth plan and known as 2% Strategy areas 2%.
- Support CEQA reform that addresses environmental impacts at the regional, rather than project, scale and promotes environmental outcomes that are preferable to current conditions or "no-plan" future scenarios.
- Support CEQA reform that combines the regional analysis and the streamlined in-fill EIR to form the functional equivalent of an EIR.

#### Development

 Build federal, state and local stakeholder support, including public and private interests, for environmental streamlining.

#### **Local Finance**

#### Monitoring

 Via CALCOG, CSAC, the League of Cities and other organizations, monitor legislation pertaining to local finance, including bills and constitutional amendments regarding local sales taxes, property taxes, and gaming fees.

#### **ENERGY AND ENVIRONMENT**

#### Air Quality

#### Advocacy

 Advocate community impact and air quality mitigation programs for goods movement projects.

2006 State and Federal Legislative Program CP#104152v.11

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Comment [p3]: This item was added at the request of the CEHD.

Comment [p4]: This section was relocated from within Transportation to Community, Economic and Human Development to reflect both its emphasis on housing and regional planning and its role in the Regional Comprehensive Plan, a project under the jurisdiction of the CEHD.

Comment [p5]: The subject of CEQA reform has been clarified in the Legislative Program at the request of the TCC and the EEC. These three items are consistent with the July 7, 2005 adopted Regional Council policy on SCAG's participation in the ongoing CEQA reform discussions in Sacramento.

- Support air quality programs that incentivize the acceleration of private and public fleet turn-over to help reduce total regional emissions from on-road mobile sources.
- Support programs that incentivize cost-effective, market-based approaches that
  promote air-quality beneficial urban form, including incentive programs to encourage
  pedestrian/bike-friendly redevelopment projects that will help reduce vehicle miles
  traveled, congestion, and associated emissions <sup>2%</sup>.
- Support programs that fund outreach, education, and incentive programs to encourage behavioral change needed to help reduce vehicle miles traveled, congestion, and associated emissions.
- Urge the state and federal government to take action to reduce mobile source emissions under their jurisdictions or to delegate authority over these mobile sources to local governments.

#### Monitoring

- Monitor air quality issues affecting the SCAG region.
- Monitor legislation or regulations pertaining to power plants located on the Mexican side of the U.S./Mexico border and to their negative effect on air quality in the SCAG region.

#### **Energy**

#### Monitoring

 Track energy legislation relating to the formation, aggregation, and siting of utilities, energy efficient building standards, and renewable energy resources.

#### Development

- Encourage state efforts to develop energy goals and coordinate local initiatives to provide reliable, secure and safe energy at the lowest possible cost.
- Encourage efforts by the federal, state and local governments of the United States and Mexico to formulate an agreement establishing common environmental standards for the US/Mexico border.
- Encourage the installation and maintenance of California Best Available Control Technologies (BACT) on power plants in neighboring states and on the Mexican side of the US/Mexico border.

#### **Habitat and Open Space**

#### Advocacy

 Advocate market-based, incentive approaches to habitat management at the urbanrural interface, such as easement rights acquisition.

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2006 State and Federal Legislative Program CP#104152v.11

#### Monitoring

• Monitor state and federal legislation that affects the management of wilderness habitat, urban habitat, endangered species, and recreational open space.

#### Development

- Encourage the development of state and federal legislation that better integrates habitat conservation planning with regional transportation and land use development plans <sup>2%</sup>.
- Encourage the development of state legislation that supports the better integration of science into habitat and open space management.
- Encourage the development of state legislation that incentivizes the preservation of agricultural lands subject to urbanization pressures <sup>2%</sup>.

#### Sustainability

#### Advocacy

- Support state legislation that promotes sustainability and environmental justice in local and regional planning <sup>2%</sup>.
- Support state legislation that incentivizes the development of brownfield sites in urban areas <sup>2%</sup>.
- Support state legislation that incentivizes the adoption of green building standards <sup>2%</sup>.

#### Development

• Encourage the development of state and federal incentives to promote urban infill development, as proposed in the Compass Implementation Framework <sup>2%</sup>.

#### Waste Management

#### Advocacy

 Support legislation that removes impediments to the adoption of conversion technologies that will help municipalities maintain or exceed their requirement to divert 50% of their solid waste away from landfills.

#### Monitoring

 Track state legislation that proposes changes to solid waste diversion mandates, establishes new mandates for solid waste management including electronic waste, or changes municipal recycling procedures. Comment [p6]: The reference to "transformation" was removed from this item at the request of the EEC.

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- Track state legislation that proposes changes to the management and handling of hazardous waste.
- Track federal legislation that proposes changes to the management and handling of solid waste.
- Track California Integrated Waste Management Board (CIWMB) regulatory actions, including issues regarding specific types of waste, alternative daily cover, tipping fees, and markets for recyclable materials.

**Comment [p7]:** This item was added at the request of the EEC.

#### Development

- Encourage the development of state legislation and regulations to incentivize the deployment of innovative recycling and conversion technology projects.
- Encourage the development of state legislation that incentivizes the recycling and reuse of building demolition debris.

#### Water

#### Advocacy

• Support state and federal legislation and other government actions that encourage comprehensive planning and implementation of water quality and supply measures, such as those relating to stormwater, non-point source pollution, and total maximum daily loads (TMDLs), including the creation and operation of local agency initiatives for collaborative management of regional water resources <sup>2%</sup>.

#### Monitoring

- Monitor developments in the Bay Delta and on the Colorado River to ensure that the quantity and quality of Southern California water supplies are appropriately protected.
- Track state legislation and regulatory action and litigation concerning regional water impairments and water supplies.

Comment [p8]: This item combines two items previously shown under Monitoring into a single Advocacy item. The EEC requested the two items be moved to Advocacy. One of the two items had called for tracking amendments to the Clean Water Act regarding stormwater and non-point source pollution. The second item called for tracking state legislation on total maximum daily loads (TMDLs). This item reflects the EEC's desire that stormwater, non-point source pollution and TMDLs, among other water quality measures, be handled comprehensively and collaboratively.

2006 State and Federal Legislative Program CP#104152v.11

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DATE:

December 1, 2005

TO:

**Energy and Environment Committee** 

FROM:

Jennifer Brost Sarnecki, AICP, Associate Regional Planner,

213-236-1829, brost@scag.ca.gov

SUBJECT:

Pomona Inland Valley Partnership Program

**EXECUTIVE DIRECTOR'S APPROVAL:** 

#### **RECOMMENDED ACTION:**

Approve continued discussions between SCAG, Southern California Edison, and Intergy Corporation.

#### **SUMMARY:**

Staff will present a proposed energy efficiency partnership between SCAG, Southern California Edison (SCE) and Intergy Corporation. SCAG staff, with guidance from Karen Tachiki, Chief Counsel and Heather Copp, Chief Financial Officer, has participated in discussions with Intergy to clarify the proposed roles of each partnering entity and the contractual framework.

The California Public Utilities Commission (CPUC) has approved funding for a two-year program at \$1.5 million. Additional funding may be available depending on the performance of the program. SCAG will be compensated for staff time spent on this program.

#### **BACKGROUND:**

In April 2005, SCAG was approached by Intergy Corporation to participate with Intergy and Southern California Edison (SCE) in the implementation of the 2006-08 Pomona Inland Valley Partnership Program, also known as the San Gabriel Valley Energy Efficiency Program (SGVEEP). In May 2005, SCAG sent a letter of conceptual support of the program to SCE stating that the partnership could significantly reduce the energy used by these city facilities resulting in substantial benefits for the cities as well as SCE.

SGVEEP is a proposed energy efficiency partnership program between SCAG, SCE, Intergy Corporation, and nine Cities in the San Gabriel Valley. SGVEEP is currently funded by California ratepayers and administered by SCE under the auspices of the California Public Utilities Commission (CPUC). The Program would consist of several components centered on energy efficiency and energy education.

SGVEEP would build on the success of the current 2004-2005 Pomona Partnership Program. This program is currently being implemented and is a partnership between SCE and the City of Pomona. The program has successfully implemented energy efficiency retrofits in City facilities and completed various outreach activities for the City of Pomona. The 2004-2005 Pomona partnership program is being implemented in close coordination with the City of Pomona and



other local networks and organizations. SGVEEP was designed to build on this infrastructure by raising awareness of energy efficiency and by completing targeted retrofit and retrocommissioning projects in city facilities.

#### **Purpose:**

The primary purpose of SGVEEP is to allow City facilities to lower operating costs and achieve permanent load reduction by improving energy efficiency in new and existing facilities. The Program would assist the targeted Cities in complying with the Governor's Executive Order S-20-04 which requires state agencies and departments to reduce energy purchases by 20% over the next ten years. Key long term objectives of SGVEEP are to implement the various components of the program, measure its success, make any appropriate changes, and expand the scope to include other cities and counties in the SCAG region.

The targeted nine cities include: Covina, West Covina, Industry, Glendora, La Verne, San Dimas, Diamond Bar, Walnut, and Pomona. Current energy efficiency programs have not fully met the unique energy efficiency implementation needs of these cities. SGVEEP is designed, with the appropriate levels of flexibility, to be customized for each city's unique need to implement energy efficiency projects. SGVEEP will offer incentives and technical assistance to cities for implementing energy efficiency projects. The incentives to the cities will require no repayment. Training to city facility planning staff on maintenance procedures, retro commissioning, and new construction projects will be offered. The program will also include an outreach component to improve energy efficiency practices in the targeted cities.

This partnership would implement the adopted SCAG policy related to energy, which states, "SCAG shall continue to work with local jurisdictions and energy providers through the Energy and Environment Committee and other means, to encourage regional-scale planning for improved energy management. Future impacts to energy shall be minimized through cooperative planning and information sharing within the SCAG region. This cooperative planning shall occur during the update of the Energy chapter of SCAG's Regional Comprehensive Plan and Guide."

#### **Funding:**

SCAG's role in SGVEEP will be completely funded by the program at fully loaded costs and will primarily be centered on specific administration tasks and communications with the targeted cities. Intergy Corporation will be responsible for the implementation of the various activities of this program. SGVEEP will leverage and directly access public-goods funds to improve energy efficiency in the targeted cities. Implementation will be closely coordinated with the San Gabriel Council of Governments (SGCCOG). The program implementation will begin in 2006, and will continue until 2008.

The funding for the program is currently at \$1.5 million. Additional funding may be available depending on the performance of the program. This program was submitted by SCE to CPUC for funding as a part of their overall portfolio of 2006-2008 energy efficiency programs. CPUC has approved this program.

#### **Activities and Outcomes:**



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SGVEEP will provide energy education, retrofit assistance, Retro-Commissioning (RCx) as well as design consultation and energy analysis of renovation project plans. Training seminars on energy efficiency will be completed for facility planning staff of the targeted cities. Analysis of city facilities will be conducted to identify demand reduction projects with energy efficiency alternatives for the targeted city facilities. In addition, the program will address the Green Building Initiative Executive Order Compliance Assistance and LEED Certification by providing design and management consultation to formulate an action plan and provide assistance to local governments to comply with the Executive Order.

SGVEEP will complete targeted energy awareness campaigns targeting residents and businesses to increase awareness of energy efficiency savings programs and of the importance of energy conservation in maintaining a healthy environment, reducing costs, and creating other economic benefits. Outreach events will further generate awareness and drive participation in energy programs offering low cost/no cost products, services and financial incentives. Event sponsors could include SCE, the city, local community-based organizations, businesses, schools and others.

Some specific activities within SGVEEP will include:

<u>Energy Efficiency Retrofits</u> - Provide project identification assistance, technical assistance during implementation, and financial incentives to offset the costs of energy efficient retrofits. This will also include post installation verification to ensure that quality control procedures have been followed.

<u>Energy Information</u> - Provide City staff, businesses and residents with information on energy efficiency programs and services, demand response, self- generation, low income, CEC, DOE, EPA and other energy assistance programs such as gas and water efficiency resources. The program will also provide assistance in developing recognition programs for cities that meet or exceed State and federal regulations.

Energy Efficiency Training - Energy code training and other energy efficiency training will be provided to facility planning staff in the targeted cities. Training will include Building Operator Certification Training (BOC). This will assist cities to transition to the new energy codes and provide information and education to local jurisdictions that are considering local ordinances on energy efficiency. Training will leverage current SCE resources.

<u>Energy Audits and Project Identification</u> - These services will be provided to support city government investments in energy efficiency retrofits, renovation and monitoring based continuous commissioning (MBCx) and retro commissioning (RCx) of targeted city facilities. Complete technical and financial analysis reports for the identified energy efficiency projects will be provided.

<u>Green Building Initiative Executive Order Compliance</u> - Assist targeted cities in Leadership in Energy and Environmental Design (LEED) certification and implementing the Governor's Executive Order S-20-04, The Green Building Action Plan. The program will collaborate with the State of California to enhance Green building compliance support.



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Bench-marking and Performance Tracking – SGVEEP will assist partnering organizations in benchmarking their energy use by providing energy use data for their facilities as well as assist in the development of facility retrofit and retro-commissioning plans.

<u>Energy Efficiency Outreach and Community Activities</u> - SGVEEP will leverage the local city government's unique communications and outreach infrastructure to promote energy efficiency. Community activities will be coordinated and implemented. It is anticipated that these activities will mobilize communities and create excitement around energy efficiency, resulting in deeper penetration of statewide and local energy efficiency programs.

FISCAL IMPACT:

SCAG's staff time spent on this program will be completely funded by the program.



DATE:

December 1, 2005

TO:

**Energy and Environment Committee** 

FROM:

Solid Waste Task Force

Jacob Lieb, Acting Lead Regional Planner, (213) 236-1921, lieb@scag.ca.gov

**SUBJECT:** 

S1607 Solid Waste on Railroad Properties

**EXECUTIVE DIRECTOR'S APPROVAL:** 

#### **RECOMMENDED ACTION:**

Support Solid Waste Environmental Regulation/Railroads, S1607/HR 3577.

#### **SUMMARY**

The Solid Waste Task Force recommends support of federal legislation to clarify jurisdiction of solid waste facilities on railroad properties. Existing Federal Law exempts railroads from State and local environmental regulation, and grants sole jurisdiction over these matters to the Surface Transportation Board. The proposed legislation would create an exception for solid waste management facilities.

#### **BACKGROUND:**

The sole jurisdiction of the Federal government over railroads has created the unintended consequence of allowing solid waste disposal facilities on railroad property to be unregulated. In practice, this lack of oversight leads to environmental hazards and difficulty in implementing integrated waste management practices.

The proposed legislation, S1607 (Corzine) and HR 3577 (House companion bill) would simply remove solid waste from among the responsibilities of the Surface Transportation Board, thereby subjecting sites to whatever other regulation would otherwise apply.

The Solid Waste Task Force considered this item at its meeting on September 22, and unanimously recommended support for this legislation.

FISCAL IMPACT:

All work related to adopting the recommended staff action is contained within the adopted FY05/06 budget and adopted 2005 SCAG Legislative Program and does not require the allocation of any additional financial resources.

#### Attachment:

Text of legislation



109TH CONGRESS 1ST SESSION

# S. 1607

To amend section 10501 of title 49, United States Code, to exclude solid waste disposal from the jurisdiction of the Surface Transportation Board.

### IN THE SENATE OF THE UNITED STATES

JULY 29, 2005

Mr. LAUTENBERG (for himself and Mr. CORZINE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

## A BILL

- To amend section 10501 of title 49, United States Code, to exclude solid waste disposal from the jurisdiction of the Surface Transportation Board.
  - 1 Be it enacted by the Senate and House of Representa-
  - 2 tives of the United States of America in Congress assembled,
  - 3 SECTION 1. SHORT TITLE.
  - 4 This Act may be cited as the "Solid Waste Environ-
  - 5 mental Regulation Clarification Affecting Railroads Act of
  - 6 2005".

| 1  | SEC. 2. AMENDMENTS TO EXCLUDE SOLID WASTE DIS-        |
|----|---|
| 2  | POSAL FROM THE JURISDICTION OF THE                    |
| 3  | BOARD.  |
| 4  | Section 10501 of title 49, United States Code, is     |
| 5  | amended—  |
| 6  | (1) in subsection (b)(2), by inserting "except        |
| 7  | solid waste management facilities (as defined in sec- |
| 8  | tion 1004 of the Solid Waste Disposal Act (42         |
| 9  | U.S.C. 6903))," after "facilities,"; and              |
| 0  | (2) in subsection (e)(2)—                             |
| 11 | $(\Lambda)$ by striking "over mass" and inserting     |
| 12 | the following: "over—                                 |
| 13 | "(A) mass"; and                                       |
| 14 | (B) by striking the period at the end and             |
| 15 | inserting the following: "; or                        |
| 16 | "(B) the processing or sorting of solid               |
| 17 | waste.".  |

109TH CONGRESS 1ST SESSION

# H. R. 3577

To amend section 10501 of title 49, United States Code, to exclude solid waste disposal from the jurisdiction of the Surface Transportation Board.

#### IN THE HOUSE OF REPRESENTATIVES

July 28, 2005

Mr. MENENDEZ (for himself, Mr. PALLONE, Mr. PASCRELL, Mr. ANDREWS, and Mr. ROTHMAN) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

## A BILL

To amend section 10501 of title 49, United States Code, to exclude solid waste disposal from the jurisdiction of the Surface Transportation Board.

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 SECTION 1. AMENDMENTS TO EXCLUDE SOLID WASTE DIS-
- 4 POSAL FROM THE JURISDICTION OF THE
- 5 BOARD.
- 6 Section 10501 of title 49, United States Code, is
- 7 amended—
- 8 (1) in subsection (b)(2), by inserting "except
- 9 for solid waste management facilities (as defined in

| 1  | section 1004 of the Solid Waste Disposal Act (42 |
|----|--|
| 2  | U.S.C. 6903))," after "facilities,"; and         |
| 3  | (2) in subsection (c)(2)—                        |
| 4  | (A) by striking "over mass" and inserting        |
| 5  | the following: "over—                            |
| 6  | "(A) mass"; and                                  |
| 7  | (B) by striking the period at the end and        |
| 8  | inserting the following: "; or                   |
| 9  | "(B) the processing or sorting of solid          |
| 10 | waste.".   |

## S. 1607 - July 29, 2005

## Solid Waste Environmental Regulation Clarification Affecting Railroads Act of 2005

(Companion House of Representative, H.R. 3577) Mike Mohajer

On 7/29/05, Senators Lautenberg (D-NJ) and Corzine (D-NJ) introduced **S. 1607** addressing the loop hole in the Interstate Commerce Commission Termination Act of 1995 that gives the Federal Surface Transportation Board the authority to exempt rail operators from complying with state and local solid waste laws and regulations. Below is an excerpt from the Congressional Record with the legislative language and statements from the two New Jersey Senators.

### CONGRESSIONAL RECORD -- July 29, 2005 SENATE (PP: S9531 & 2)

By Mr. LAUTENBERG (for himself and Mr. CORZINE):

S. 1607. A bill to amend section 10501 of title 49, United States Code, to exclude solid waste disposal from the jurisdiction of the Surface Transportation Board; to the Committee on Commerce, Science, and Transportation.

Mr LAUTENBERG. Mr. President, I rise to introduce legislation to address a serious problem in New Jersey and across the nation—the unregulated sorting and processing of garbage at rail facilities in our communities.

A conflict in Federal laws and policy has resulted in certain solid waste-handling facilities located on railroad property being unregulated. Environmental laws such as the Solid Waste Disposal Act should apply to the operation of these facilities. However, a broad-reaching Federal railroad law forbids environmental regulatory agencies from overseeing the safe handling of trash or solid waste at these sites.

These unintended consequences require our attention, and are the reason for the Solid Waste Environmental Regulation Clarification Affecting Railroads Act of 2005.

The Federal railroad law in question was enacted most recently in the Interstate Commerce Commission Termination Act of 1995 to protect the operation of interstate rail service. The law gives 'exclusive' jurisdiction over rail transportation—and activities incident to such transportation—to the Federal Surface Transportation Board.

I realize this law is necessary for the efficient operation of commerce in our modern economy. I serve on the Committee on Commerce, Science and Transportation, as well as the Subcommittee on Merchant Marine and Surface Transportation, which oversees

the Surface Transportation Board and considers nominations of its members. The board's reputation and expertise in rail regulation is second to none.

However, the Board is limited to only a passive role in ensuring that rail facilities are operated with minimal detriment to the public health and safety. These sites require active environmental regulation, just like other solid waste handling facilities.

The recent proliferation of solid waste rail transfer facilities has affected the ability of State and local governments to engage in long-term waste management planning. These agencies also are responsible for responding to accidents and incidents occurring at these facilities.

Although transporting solid waste by rail can reduce the number of trucks hauling solid waste on public roads, handling this waste without careful planning and management presents a danger to human health and the environment.

These transfer operations create thick dust, which is potentially hazardous and is breathed in by local residents and business owners.

Some transfer facilities don't have proper drainage on site, leading to the potential contamination of surface and groundwater and nearby wetlands.

In addition, these facilities raise serious concerns about the safety of their workers and the exemptions they claim from strong State worker protection laws.

As a result of these chilling reports, I asked state agencies in New Jersey, railroads, and other interested groups to provide input into possible legislation to address this problem.

Many experts in New Jersey, including the Department of Environmental Protection, the Meadowlands Commission, the Pinelands Commission, and the Rutgers Environmental Law Clinic, provided excellent suggestions. I look forward to working with them throughout the process to find a solution to this problem.

I have also met with railroad interests, who are concerned about their ability to continue hauling solid waste. Some operators of these rail facilities have voluntarily complied with State environmental laws, even though they could claim that Federal railroad law preempts any enforcement action States could take. I would like to thank members of the solid waste handling industry for their concern and input as well.

One reason this legislation is needed is that the Surface Transportation Board has never clarified whether it even has jurisdiction over the processing and sorting of solid waste at a rail facility.

This bill would make it clear that Congress' intent was not to subvert the policies of the Solid Waste Disposal Act and other environmental laws covering the handling of garbage.

The bill will clarify the intent of Congress in passing these two important laws, and ensure that they work together to provide for a robust, environmentally responsible rail system.

Some have suggested that perhaps this clarification should not be limited to the processing and sorting of solid waste. But these are the activities that require the greatest environmental oversight, because they pose the greatest environmental risk.

Many towns across the country are beginning to understand the problem of having an unregulated polluting neighbor, and having nowhere to turn for help. Many influential organizations support this effort, including: United States Conference of Mayors, National Governors Association, Solid Waste Association of North America, Mass Municipal Association, National Solid Wastes Management Association, Integrated Waste Services Association, and Construction Material Recyclers Association.

These garbage transfer facilities should not be able to circumvent and ignore our environmental and safety laws. I realize that the Surface Transportation Board must have broad jurisdiction over rail transportation, but that jurisdiction should not be interpreted in a way that puts our environment at risk.

Railroading has a bright future in New Jersey and throughout our country, as freight loads have increased to levels we have not seen in some time. I have fought for many years to ensure that our freight transportation system, the backbone of our national economy, continues to flourish. But we need this legislation to ensure that these solid waste rail transfer facilities are run in the same environmentally responsible manner as other solid waste sites.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1607

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Solid Waste Environmental Regulation Clarification Affecting Railroads Act of 2005".

SEC. 2. AMENDMENTS TO EXCLUDE SOLID WASTE DISPOSAL FROM THE JURISDICTION OF THE BOARD.

Section 10501 of title 49, United States Code, is amended -

- (1) in subsection (b)(2), by inserting "except solid waste management facilities (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903))," after "facilities,"; and
- (2) in subsection (c)(2) --
- (A) by striking "over mass" and inserting the following: "over --
- "(A) mass"; and
- (B) by striking the period at the end and inserting the following: "; or
- "(B) the processing or sorting of solid waste.".

Mr. CORZINE. Mr. President, I rise in support of legislation being introduced today by my colleague from New Jersey, Senator LAUTENBERG. This legislation, the Solid Waste Environmental Regulation Clarification Affecting Railroads Act of 2005, would deal with a growing problem in my state: the problem of railroads avoiding strict environmental standards by constructing waste transfer facilities next to rail lines. I am proud to cosponsor this important legislation.

I first became aware of this problem when constituents contacted me about a waste transfer facility proposed to be built by a railroad in Mullica Township, New Jersey. There could not be a worse place for such a facility. Mullica Township is located in the Pinelands National Reserve, which encompasses more than 1.1 million acres of ecologically sensitive land. The Pinelands was designated as our nation's first national reserve in order to protect its streams, bogs, and cedar and hardwood swamps, as well as the many species that live there. Yet many of these protections could be circumvented if this proposed facility is built. The railroad argues that federal statute provides a shield from all environmental standards for any trash facility built adjacent to a rail line. This same argument has been used by railroads in the case of 5 similar facilities that are already in operation in North Bergen. These facilities lie near New Jersey's Meadowlands, another environmental treasure.

The statute being used by the railroads establishes the Surface Transportation Board, STB, as the regulatory agency for the nation's railroads, title 49 of the United States Code. Under section 10501, the STB has exclusive jurisdiction over the "construction, acquisition, or operation" of "facilities" located adjacent to a rail line. The railroads argue that facility means any facility, including a trash transfer station. They argue that because of this statute, federal law preempts all other state and local protections.

I cannot believe that Congress intended these types of facilities to be exempt from State and local environmental standards. The risk to the surrounding communities from the air

pollution and groundwater contamination that could occur when open rail cars carrying solid waste are allowed to load and off-load is too great. However, I believe that we must take steps to clarify the law's intent. The "Solid Waste Environmental Regulation Clarification Affecting Railroads Act of 2005 will do this. The Act makes it clear that all state and local environmental laws and restrictions apply to these facilities.

This is a commonsense measure that insures that the public remains fully involved in decisions relating to these facilities, regardless of where they are built. I urge its enactment.

MMM - 8/17/05

Proposed amendments by S. 1607 (& H.R.3577) to Section 10501 of Title 49, United States Code. Deletions are shown by strikethrough and addition in bold and underlined.

- Subsection (b)(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, except solid facilities (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903)), even if the tracks are located, or intended to be located, entirely in one state,; and
- 2. Subsection (c)(2) Except as provided in paragraph (3), the board does not have jurisdiction under this part over mass over (A) mass transportation provided by a local government authority.; or (B) the processing or sorting of solid waste.

MMM - 8/17/05

109TH CONGRESS 1ST SESSION

# H. R. 3577

To amend section 10501 of title 49, United States Code, to exclude solid waste disposal from the jurisdiction of the Surface Transportation Board.

# IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2005

Mr. MENENDEZ (for himself, Mr. PALLONE, Mr. PASCRELL, Mr. ANDREWS, and Mr. ROTHMAN) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

# A BILL

To amend section 10501 of title 49, United States Code, to exclude solid waste disposal from the jurisdiction of the Surface Transportation Board.

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 SECTION 1. AMENDMENTS TO EXCLUDE SOLID WASTE DIS-
- 4 POSAL FROM THE JURISDICTION OF THE
- 5 BOARD.
- 6 Section 10501 of title 49, United States Code, is
- 7 amended—
- 8 (1) in subsection (b)(2), by inserting "except
- 9 for solid waste management facilities (as defined in

| 1  | section 1004 of the Solid Waste Disposal Act (42 |
|----|--|
| 2  | U.S.C. 6903))," after "facilities,"; and         |
| 3  | (2) in subsection (e)(2)—                        |
| 4  | (A) by striking "over mass" and inserting        |
| 5  | the following: "over-                            |
| 6  | "(A) mass"; and                                  |
| 7  | (B) by striking the period at the end and        |
| 8  | inserting the following: "; or                   |
| 9  | "(B) the processing or sorting of solid          |
| 10 | waste.".   |

Proposed amendments by S. 1607 (& H.R.3577) to Section 10501 of Title 49, United States Code. Deletions are shown by strikethrough and addition in bold and underlined.

- Subsection (b)(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, except solid facilities (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903)), even if the tracks are located, or intended to be located, entirely in one state,; and
- 2. Subsection (c)(2) Except as provided in paragraph (3), the board does not have jurisdiction under this part over mass over (A) mass transportation provided by a local government authority: or (B) the processing or sorting of solid waste.

MMM - 8/17/05

DATE:

December 1, 2005

TO:

**Energy and Environment Committee** 

FROM:

Solid Waste Task Force

Jacob Lieb, Acting Lead Regional Planner, (213) 236-1921, lieb@scag.ca.gov

**SUBJECT:** 

"Underground Rulemaking"

**EXECUTIVE DIRECTOR'S APPROVAL:** 

### **RECOMMENDED ACTION:**

Support legislation to clarify "underground rulemaking."

## **SUMMARY**

The Solid Waste Task Force recommends support for legislation to clarify the Administrative Procedures Act regarding "underground rulemaking." Existing State Law prohibits State agencies from making regulations without adequate public disclosure and review. AB 1351, prior to being amended and vetoed in the last legislative session, would have closed loopholes in the existing law that have allowed agencies to circumvent these requirements. The Solid Waste Task Force recommends that SCAG support the improvements that had been proposed in AB 1351.

## **BACKGROUND:**

AB 1351 (Vargas), as of February 2005, would have provided clarification to the Administrative Procedures Act such that State agency actions having the effect of regulations would be subject to the act. As such, bulletins, guidelines, procedures, and other types of documents could not be used in order to avoid the rule making process. "Underground rulemaking" is of concern to the Solid Waste Task Force due to various practices of the California Integrated Waste Management Board. The bill would also have provided additional resources to the Office of Administrative Law to enforce provisions of the Administrative Procedures Act.

The Solid Waste Task Force recommended that SCAG send a letter to the Governor's office requesting that the concepts included in AB 1351 be pursued in the next legislative year.

## **FISCAL IMPACT:**

All work related to adopting the recommended staff action is contained within the adopted FY05/06 budget and adopted 2005 SCAG Legislative Program and does not require the allocation of any additional financial resources.

# Attachment:

Text of AB 1351 prior to amendments



AMENDED IN SENATE JULY 7, 2005

AMENDED IN SENATE JUNE 27, 2005

AMENDED IN ASSEMBLY APRIL 28, 2005

AMENDED IN ASSEMBLY APRIL 13, 2005

california legislature 2005 06 regular session

ASSEMBLY BILL

No. 1351

Introduced Assembly Membewargas

Februar 2, 2005

An act to amendion 11340.5 of, and to Smidiserstion 11340.5, 11346.1, and 11349.6 of, and to add Sections 11342.545 and 11342.620 to, the Government Code, relating to state agencies.

legislative courseligest

AB 1351, as amendwadgasOffice of Administrative Law: regulations.

Existing law prohibits a state agency from issuing, utilizing, enforcing, or attempting to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, unless it has been adopted as a regulation and filed with the Secretary of State. Under existing law, if the Office of Administrative Law is notified, or learns on its own, that an agency guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has not been adopted as a regulation and filed with the Secretary of State, the office may issue a determination as to whether it is a regulation. Existing law also authorizes any interested person to obtain a judicial declaration as to the validity of any regulation.

2

This bill would provide that any guideline, criterion, bulletin, provision in a manual, instruction, order, standard of general application, or other rule that is a regulation but is not adopted as a regulation and filed with the Secretary of State constitutes an underground regulation and would establish a procedure for any interested person with information that a state agency has issued, used, enforced, or attempted to enforce an underground regulation to petition Orficie of AdministratifyEd deaw a determination that this agency action is an underground regulation. It would require the office, within 30 days after receiving a petition, to decide whether or not to consider the petition on its merits and would make this decision not subject to judicial review. It also would provide that, if the office decides to consider the petition on its merits, then the office is required, no later than 150 days after public notice of this petition, to determine whether the agency action is an underground regulation. It also would suspend these requirements connected with a petition if the agency issuing the alleged underground regulation certifies that it will not issue, use, enforce, or attempt to enforce the regulation. It also would provide that filing a petition pursuant to these provisions is not required prior to bringing an action in superior court seeking judicial declaration on the validity of a regulation.

Existing law provides that, if a state agency makes a finding that the adoption of a regulation or order of repeal is necessary for the immediate preservation of the public peace, health and safety or general welfare, the regulation or order of repeal may be adopted as an emergency regulation or order of repeal. Under existing law, a regulation, amendment, or order of repeal adopted as an emergency regulation remains in effect nd2fhortayshamless the adopting agency complies with certain requirements.

This bill would require an agency that is adopting an emergency regulation to mail at least 5 working days prior to submission of an emergency regulation to the office a notice of proposed emergency action to every person who has filed a request for notice of regulatory action with the agency unless the emergency situation clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with the public interest. The bill would extend to 180 days the maximum period of time a regulation, amendment, or order of repeal initially adopted as an emergency regulation. The bill would authorize the office to approve one readoption of an emergency fegulation not to exceed 90

days, as specified. The bill would require the office, after posting a notice of the filing of a proposed regulation on its Web site, to allow interested persons 5 calendar days to submit comments on the proposed emergency regulations unless delaying action to allow public comment would be inconsistent with the public interest.

Vote: majoritAppropriationo Fiscarbumittee yes. State > mandatedadrogram: no.

The people of the State of California do enact as follows:

- SECTION 1.Section 11340.5 Cobvehement Codies 1
- 2 amended to read:
- 11340.5(a)No state agency shall issue, use, enforce, or attempt to enforce any underground regulation as defined in Section 11342.620.
- (b)Any interested person with information that a state agency 7 has issued, used, enforced, or attempted to enforce an
- 8 underground regulation as defined in Section 11342.620 may
- 9 petition the office for a determination that a particular guideline,
- 10 criterion, bulletin, provision in a manual, instruction, order,
- 11 standard of general application, or other rule or procedure is an
- 12 underground regulation. For purposes of this subdivision, an
- interested person shall not include a state agency. The petition
- 14 shall include all of the following:
- (1) The name and contact information of the petitioner.
- (2) The name and contact information of the agency that has 16
- 17 allegedly issued, used, enforced, or attempted to enforce an 18 underground regulation.
- 19 (3)A complete description of the particular underground
- 20 regulation, and a copy of any written expression of the 21 underground regulation.
- 22 (4)A description of the actions of the agency evidencing that
- 23 it has issued, used, enforced, or attempted to enforce the 24 underground regulation.
- (5) The legal basis for concluding that the guideline, criterion,
- 26 bulletin, provision in a manual, instruction, order, standard of
- 27 general application, or other rule or procedure is a regulation as
- 28 defined in Section 11342.600 and that no express statutory
- 29 exemption to the requirements of this chapter is applicable.

(6)Information demonstrating that the petition raises an issue of considerable public importance requiring prompt resolution. (c)Upon the filing of the petition, the petitioner shall submit a copy of the petition and all attachments to the agency. (d)(1)No later than 30 days after receipt of a complete 6 petition filed pursuant to subdivision (b), the office shall determine whether or not to consider the petition on its merits, in its entirety or in part, unless, prior to the end of the 30>day period, the agency submits to the office a certification pursuant to 10 subdivision (i). If the office declines to consider the petition, it 11 shall immediately advise the petitioner and the agency of the 12 decision and specifically indicate that the decision in no way 13 reflects on the merits of the underlying issue presented by the 14 petition. A decision by the office under this paragraph, to 15 consider or not to consider a petition on its merits, is not subject 16 to judicial review. A decision under this paragraph shall also not 17 be considered by a court in any action seeking judicial review of 18 a claimed violation of subdivision (a). (2) If the office decides to consider the petition on its merits, it 19 20 shall notify the petitioner and the agency of this decision and 21 shall publish the petition or a summary of the petition in the next 22 California Regulatory Notice Register, giving notice to the public 23 that comments on issues raised by the petition may be submitted 24 to the office. Any person submitting comments to the office shall 25 simultaneously provide a copy of the comments to the agency. 26 The agency shall submit to the office a response to the petition 27 and shall serve a copy of any response to the petition on the 28 petitioner. The petitioner may submit a reply to the agency s 29 response to the office and to the agency after being served with 30 that response. (3)After the time for the petitioner to submit a reply to the 31 32 agency s response, and no later than 150 days after publication of 33 the accepted petition in the California Regulatory Notice 34 Register, the office shall issue a determination as to whether or 35 not the particular guideline, criterion, provision in a manual, 36 instruction, order, standard of general application, or other rule or 37 procedure is an underground regulation. (e)Upon issuing a determination pursuant to paragraph (3) of 39 subdivision (d), the office shall do all of the following:

(1) File its determination with the Secretary of State.

(2) Make its determination known to the agency, the 2 Governor, and the Legislature.

- (3) Publish its determination in the California Regulatory 4 Notice Register within 15 days of the date of issuance.
- (4) Make its determination available to the public and the 6 courts.
- (f)Any interested person may obtain judicial review of a 7 8 determination issued pursuant to paragraph (3) of subdivision (d) 9 by filing a written petition requesting that the determination of 10 the office be modified or set aside. A petition shall be filed with 11 the court within 90 days of the date the determination is 12 published.
- (g)A determination issued by the office pursuant to this 14 section shall not be considered by a court, or by an administrative 15 agency in an adjudicatory proceeding if all of the following
- (1) The court or administrative agency proceeding involves the 17 18 party that sought the determination from the office.
- (2) The proceeding began prior to the party s request for the 19 20 office s determination.

21

- (3)At issue in the proceeding is the question of whether the 22 particular guideline, criterion, bulletin, provision in a manual, 23 instruction, order, standard of general application, or other rule or 24 procedure that is the legal basis for the adjudicatory action is a 25 regulation as defined in Section 11342.600 or an underground 26 regulation as defined in Section 11342.620.
- (h) The office shall adopt regulations to implement this 27 28 section, which shall include regulations specifying the time to 29 file comments on a petition, responses, and replies, and which 30 may include, but not be limited to, the following:
- (1) Authorizing a party who filed comments on a petition to 32 submit a reply to the agency s response to the petition.
- (2) Authorizing the office to extend the time for an agency to 34 file a response to a petition if the agency is a state body 35 defined in Section 11121 and the agency s response requires 36 action taken at a meeting subject to Article 9 (commencing with 37 Section 11120) of Chapter 1.
- (i)Any action required of the office or an agency by this 39 section in connection with a petition shall be suspended if the 40 office receives a certification from the agency that it will not

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- 1 issue, use, enforce, or attempt to enforce the alleged underground
- 2 regulation along with proof that the certification has been served
- 3 on the petitioner. This certification shall be made by the head of
- 4 the agency or a person with a written delegation of authority
- 5 from the head of the agency in the form specified by Section
- 6 2015.5 of the Code of Civil Procedure. Upon receipt of this
- certification and proof of service, the office shall do all of the following:
- (1) File the petition and the certification with the Secretary of 10 State.
- (2) Publish a summary of the petition and the certification in 11 12 the California Regulatory Notice Register.
- (3) If the certification is received after the petition or summary 13 14 of the petition has been published in the California Regulatory 15 Notice Register, make the petition and certification known to the 16 Governor and the Legislature.
- (j) The filing of a petition pursuant to this section is not 18 required prior to seeking judicial review of a claimed violation of 19 subdivision (a) and nothing in this article is intended to limit the 20 ability of an interested person to seek judicial review pursuant to 21 Section 11350.
- SEC. 2 Section 11342.545 is addedernment Code 22 23 to read:
- 11342.549Eor purposes of adopting a regulation pursuant
- 25 to Section 11346.1, emergency means a situation not foreseen
- 26 in sufficient time to proceed in accordance with the provision of
- 27 Article 5 (commencing with Section 11346) that apply to
- 28 nonemergency regulations and that calls for immediate action to
- 29 avoid serious harm evidenced by an imminent and substantial
- 30 threat to the public peace, health, safety, or general welfare.
- Emergency does not mean expediency, convenience, best 31
- 32 interest, or general public need, and it cannot be based on
- 33 speculation.
- SEC. 2.
- SEC. 3 Section 11342.620 is addedernment Code 35
- 36 to read:
- 11342.620.Underground regulation means any guideline,
- 38 criterion, bulletin, provision in a manual, instruction, order,
- 39 standard of general application, or other rule or procedure that is
- 40 a regulation as defined in Section 11342.600, but has not been

- 1 adopted as a regulation and filed with the Secretary of State 2 pursuant to this chapter.
- 3 SEC. 4 Section 11346.1 GoodvermmentCodeis amended 4 to read:
- 5 11346.1(a)(1) The adoption, amendment, or repeal of an 6 emergency regulation is not subject to any provision of this 7 chapter except this section and Section 11349.6.
- 8 (2)At least five working days before submitting an emergency 9 regulation to the office, the adopting agency shall, except as 10 provided in paragraph (3), mail a notice of the proposed 11 emergency action to every person who has filed a request for 12 notice of office of the proposed describe all of the following:
- (A) The proposed regulatory action.
- 15 (B) The specific regulatory language proposed to be adopted.
- 16 (C) The factual and evidentiary basis for the emergency and 17 the need for immediate action.
- 18 (D) The statutory authority for adopting the regulation.
- 19 (E) The law being implemented, interpreted, or made specific.
- 20 (F) The basis for proposing the specific regulation to address 21 the emergency.
- 22 (3)An agency is not required to provide notice pursuant to 23 paragraph (2) if the emergency situation clearly poses such an 24 immediate, serious harm that delaying action to allow public 25 comment would be inconsistent with the public interest.
- 26 (b)(1)Except as provided in subdivision (c), if a state agency
  27 makes a finding that the adoption of a regulation or order of
  28 repeal is necessary for the immediate preservation of the public
  29 peace, health and safety or general welfare, the regulation or
  30 order of repeal may be adopted as an emergency regulation or
  31 order of repeal.
- 32 <del>An∨</del>
- 33 (2)Any finding of an emergency shall include a written 34 statementhichthatcontains the information required by
- 35 paragraphs (2) to (6), inclusive, of subdivision (a) of Section
- 36 11346.5 and a description of the specific facts
- 37 demonstrating the existence of an enhance found
- 38 immediate actimend demonstrating, by substantial evidence,
- 39 the need for the proposed regulation to effectuate the statute
- 40 being implemented, interpreted, or made specific and to address

37

1 only the demonstrated emalingentianding of emergency 2 shall also identify each technical, theoretical, and empirical 3 study, report, or similar document, if any, upon which the agency 4 reliesThe enactment of an urgency statute shall not, in and of 5 itself, constitute a need for immediate action. 6 (3) The statement and the regulation or order of repeal shall be 7 8 filed immediately with the office. (c)Notwithstanding any other provision of law, no emergency 10 regulation that is a building standard shall be filed, nor shall the 11 building standard be effective, unless the building standard is 12 submitted to the California Building Standards Commission, and 13 is approved and filed pursuant to Sections 18937 and 18938 of 14 the Health and Safety Code. (d) The emergency regulation or order of repeal shall become 16 effective upon filing or upon any later date specified by the state 17 agency in a written instrument filed with, or as a part of, the 18 regulation or order of repeal. (e)No regulation, amendment, or ordenitofalitypeal 19 20 adopted as an emergency regulatory action shall remain in effect 21 more than 180days unless the adopting agency has complied 22 with Sections 11346.2 to 11347.3, inclusive, either before 23 adopting an emergency regulation 100 value 24 period. The adopting agency, prior to the expiration of the 25 120>day180-daperiod, shall transmit to the office for filing 26 with the Secretary of State the adopted regulation, amendment, or 27 order of repeal, the rulemaking file, and a certification that 28 Sections 11346.2 to 11347.3, inclusive, were complied with 29 either before the emergency regulation was adopted or within the 30 <del>120>da</del>y180-dayeriod. (f) In the everal emergency amendment or order of repeal 32 is filed and the adopting agency fails to comply with subdivision 33 (e), the regulation as it existed prior to the emergency 34 amendment or order of repeal shall thereupon become effective 35 and after notice to the adopting agency by the office shall be 36 reprinted in the California Code of Regulations.

(g) In the event regulation is originally adopted and filed

38 as an emergency and the adopting agency fails to comply with

39 subdivision (e), this failure shallthemstift the a repeal

1 regulationd after notice to the adopting agency by the office, 2 shall be deleted. (h) The office shall not file an emergency regulation with the 4 Secretary of State if the emergency regulation is the same as or

5 substantially equivalent to an emergency regulation previously

6 adopted by that agency, whitest outfleioexpressly

approves the agency s readoption of the emergency regulation.

8 The office may approve one readoption of the emergency

9 regulation for a period not to exceed 90 days if the agency has

10 made substantial progress and proceeded with diligence to 11 comply with subdivision (e).

SEC. 5 Section 11349.6 Goodvetchmenent Code amended 13 to read:

11349.6(a) In the evenue adopting agency has complied 15 with Sections 11346.2 to 11347.3, inclusive, prior to the adoption 16 of the regulation as an emergency, the office shall approve or 17 disapprove the regulation in accordance with this article.

(b) Emergency regulations adopted pursuant to subdivision (b) 19 of Section 11346.1 shall be reviewed by the office within 10 20 calendar days after their submittælltetro ptdætionfgfizce.

21 notice of the filing of a proposed emergency regulation on its

22 Web site, the office shankleræktærd persons five calendar

23 days to submit comments on the proposed emergency regulations

24 unless the emergency situation clearly poses such an immediate

25 serious harm that delaying action to allow public comment would

26 be inconsistent with the public cofifteereshall not file

27 the emergency regulations with the Secretary of State if it

28 determines that the regulation is not necessary for the immediate

29 preservation of the public peace, health and safety, or general

30 welfare, or if it determines that the regulation fails to meet the

31 standards set forth in Section 11349.1, or if it determines the 32 agency failed to compulations (b) and edicion of

33 11346.1.

(c)If the office considers any information not submitted to it 34

35 by the rulemaking agency when determining whether to file

36 emergency regulations, the office shall provide the rulemaking

37 agency with an opportunity to rebut or comment upon that 38 information.

(d)Within 30 working days of the filing of a certificate of

40 compliance, the office shall review the regulation and hearing

1 record and approve or order the repeal of an emergency

- 2 regulation if it determines that the regulation fails to meet the 3 standards set forth in Section 11349.1, or if it determines that the
- 4 agency failed to comply with this chapter.

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95

DATE:

December 1, 2005

TO:

**Energy and Environment Committee** 

FROM:

Daniel E. Griset, Senior Regional Planner, (213) 236-1895, griset@scag.ca.gov

**SUBJECT:** 

Ahwahnee Water Principles for Resource Efficient Land Use

**EXECUTIVE DIRECTOR'S APPROVAL:** 

#### **RECOMMENDATION:**

The Water Policy Task Force recommends that the Energy and Environment Committee urge the Regional Council to adopt Resolution 06-469-2 in support of the Ahwahnee Water Principles for Resource Efficient Land Use and support use of these principles in local planning and project implementation.

#### **BACKGROUND:**

In 1991 the Local Government Commission adopted the first edition of "The Ahwahnee Principles", planning guidance for the development of more livable and sustainable communities in California. (The web URL for these initial policy guidelines is http://www.lgc.org/ahwahnee/principles.html.) Developed largely by a group of leading architects, these Principles focused on both community and regional aspects of planning and project development and proposed ways that implementing improved sustainability would expedite appropriate projects and communicate community goals clearly. Earlier this year the Commission adopted additional principles highlighting the linkage between Water Quality and Resource Efficient Land Use (appended to this memorandum). These principles highlight the linkage between water quality, water supply and land use, emphasizing the roles land use policy and implementation play in managing our vital natural resources.

In various ways these principles are well-aligned with the vision developed by SCAG's Compass program for integrating regional growth, efficient public investments and more sustainable environmental improvements.

FISCAL IMPACT: All work related to the recommended staff action is contained within the adopted FY 2005/06 budget under work element #06-075.



#

# The Ahwahnee Water Principles for Resource Efficient Land Use

#### Preamble

Cities and counties are facing major challenges with water contamination, storm water runoff, flood damage liability, and concerns about whether there will be enough reliable water for current residents as well as for new development. These issues impact city and county budgets and taxpayers. Fortunately there are a number of stewardship actions that cities and counties can take that reduce costs and improve the reliability and quality of our water resources.

The Water Principles below complement the Ahwahnee Principles for Resource-Efficient Communities that were developed in 1991. Many cities and counties are already using them to improve the vitality and prosperity of their communities.

# **Community Principles**

Community design should be compact, mixed use, walkable and transit-oriented so that automobile-generated urban runoff pollutants are minimized and the open lands that absorb water are preserved to the maximum extent possible. (See the Ahwahnee Principles for Resource-Efficient Communities)

Natural resources such as wetlands, flood plains, recharge zones, riparian areas, open space, and native habitats should be identified, preserved and restored as valued assets for flood protection, water quality improvement, groundwater recharge, habitat, and overall long-term water resource sustainability.

Water holding areas such as creek beds, recessed athletic fields, ponds, cisterns, and other features that serve to recharge groundwater, reduce runoff, improve water quality and decrease flooding should be incorporated into the urban landscape.

All aspects of landscaping from the selection of plants to soil preparation and the installation of irrigation systems should be designed to reduce water demand, retain runoff, decrease flooding, and recharge groundwater.

Permeable surfaces should be used for hardscape. Impervious surfaces such as driveways, streets, and parking lots should be minimized so that land is available to absorb storm water, reduce polluted urban runoff, recharge groundwater and reduce flooding.

Dual plumbing that allows grey water from showers, sinks and washers to be reused for landscape irrigation should be included in the infrastructure of new development.

Community design should maximize the use of recycled water for appropriate applications including outdoor irrigation, toilet flushing, and commercial and industrial processes. Purple pipe should be installed in all new construction and remodeled buildings in anticipation of the future availability of recycled water.

Urban water conservation technologies such as low-flow toilets, efficient clothes washers, and more efficient water-using industrial equipment should be incorporated in all new construction and retrofitted in remodeled buildings.

Ground water treatment and brackish water desalination should be pursued when necessary to



maximize locally available, drought-proof water supplies.

# **Implementation Principles**

Water supply agencies should be consulted early in the land use decision-making process regarding technology, demographics and growth projections.

City and county officials, the watershed council, LAFCO, special districts and other stakeholders sharing watersheds should collaborate to take advantage of the benefits and synergies of water resource planning at a watershed level.

The best, multi-benefit and integrated strategies and projects should be identified and implemented before less integrated proposals, unless urgency demands otherwise.

From start to finish, projects and programs should involve the public, build relationships, and increase the sharing of and access to information. The participatory process should focus on ensuring that all residents have access to clean, reliable and affordable water for drinking and recreation.

Plans, programs, projects and policies should be monitored and evaluated to determine if the expected results are achieved and to improve future practices.

#### RESOLUTION No. 06-469-2

# A RESOLUTION OF THE SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS URGING SUPPORT AND USE OF THE AHWAHNEE WATER PRINCIPLES IN LOCAL PLANNING FOR RESOURCE-EFFICIENT LAND USE

WHEREAS, cities are facing major challenges with water contamination, storm water runoff, flood damage liability, and concerns about whether there will be enough reliable water for current residents as well as for new development, issues that impact city budgets and taxpayers; and

WHEREAS, land use decisions made at the local level have major impacts on local, regional, and state water resources in terms of quality, quantity, and availability; and

WHEREAS, the Local Government Commission, in partnership with the League of California Cities and the California State Association of Counties, sought funding from the State Water Resources Control Board to develop principles related to water-efficiency and land use; and

WHEREAS, the Local Government Commission developed a set of principles known as the *Ahwahnee Water Principles for Resource-Efficient Land Use* which can reduce costs and improve the reliability and quality of our water resources, and which complement the earlier *Ahwahnee Principles for Resource-Efficient Communities*;

NOW THEREFORE BE IT RESOLVED, by the Southern California Association of Governments that SCAG encourages its member Cities and Counties to support and use *The Ahwahnee Water Principles for Resource-Efficient Land Use* to advance urban environmental quality.

BE IT FURTHER RESOLVED that SCAG urges all local agencies to also make use of the guidance of the Local Government Commission's earlier *Principles on Livable Communities*, themes that correspond with the Growth Visioning work already advanced by SCAG.

APPROVED AND ADOPTED by the [vote] of the Regional Council of the Southern California Association of Governments at a regular meeting on this 5th day of January, 2006.

| TONI YOUNG                          | Karen Tachiki             |
|-------------------------------------|---------------------------|
| President, SCAG                     | Chief Legal Counsel, SCAG |
| Councilmember, City of Port Hueneme | <del>-</del>              |
| •                                   |                           |
|                                     |                           |
|                                     |                           |
|                                     |                           |
| Mark Pisano                         |                           |



**DATE**: December 1, 2005

**TO**: Energy and Environment Committee (EEC)

FROM: Jessica Kirchner, Associate Regional Planner, 213-236-1983, kirchner@scag.ca.gov

SUBJECT: Conformity Determination and PEIR Addendum for the Draft Amendment to the 2004

Regional Transportation Plan (RTP) and 2004 Regional Transportation Improvement

Program (RTIP)

**EXECUTIVE DIRECTOR'S APPROVAL:** 

#### **RECOMMENDED ACTION:**

Release for public review and comment the conformity determination and Program EIR (PEIR) Addendum for the Draft 2004 RTP/RTIP Amendment. (Note: TCC is considering release of the Draft Amendment.)

## **SUMMARY:**

The Orange County Transportation Authority (OCTA) has requested that SCAG amend the 2004 Regional Transportation Plan (RTP) and 2004 Regional Transportation Improvement Program (RTIP) to accomplish the following:

- Replace the planned CenterLine light rail project (which is a Transportation Control Measure or TCM) with a combination of bus rapid transit, commuter rail, local shuttle, and carpool operational improvement projects
- Delete the proposed Yorba Linda Metrolink station (also a TCM) and designate the Fullerton Metrolink Station parking expansion project as a replacement TCM
- Revise the scope of the Foothill Transportation Corridor-South (SR-241) toll road project

The CenterLine and Yorba Linda amendments are requested to fulfill the TCM substitution process. Additionally, the CenterLine action is requested so that OCTA can redirect funds currently programmed for the CenterLine towards the replacement projects before such funds are lost due to the state's timely use provisions (AB1012 and annual obligation authority provisions). The Foothill-South amendment is requested to facilitate action on the project's environmental document by the Federal Highway Administration.

Amending the 2004 RTP and 2004 RTIP requires modeling the proposed project changes, conducting a conformity determination (including emissions analysis, financial constraint, and interagency consultation), preparing an addendum to the RTP Program EIR, circulating the amendment for public review and comment, and responding to comments before final adoption by the Regional Council.

SCAG has determined that the 2004 RTP and 2004 RTIP Amendments are consistent with federal and state transportation conformity requirements. SCAG has also determined that the use of an Addendum to the 2004 Regional Transportation Plan Program Environmental Impact Report is appropriate. Incorporation of the proposed project changes into the RTP will not result in either new environmental effects or a substantial increase in the severity of previously identified significant effects.



Staff anticipates returning to the EEC and Regional Council in February 2006 for final conformity determination and approval of the PEIR Addendum on the 2004 RTP and 2004 RTIP Amendments.

# **FISCAL IMPACT:**

Funds for RTP and RTIP development are included in the FY 05/06 Overall Work Program.



DATE:

December 1, 2005

TO:

**Energy and Environment Committee** 

FROM:

Jennifer Brost Sarnecki, AICP, Associate Regional Planner,

213-236-1829, brost@scag.ca.gov

**SUBJECT:** 

**Energy Summit** 

EXECUTIVE DIRECTOR'S APPROVAL: J. J.

### **RECOMMENDED ACTION:**

Approve staff's involvement in organizing an Energy Summit in 2006.

### **SUMMARY:**

To assist in the development of the RCP Energy Chapter, SCAG staff is requesting approval to plan an Energy Summit to be held in early 2006.

#### **BACKGROUND:**

SCAG staff attended the Denver World Oil Conference on November 10-11, which drew an audience of more than 425 business people, students, members of industry, policy makers, and academics from around the country. The conference generally focused on planning for the transition from a petroleum-based economy. The first day of the conference analyzed the supply of petroleum with presentations that the world has or will reach peak oil production, with a potential 4-6% decrease thereafter. The second day focused on alternatives to oil (e.g., natural gas, biodiesel, hydrogen, etc.) as part of a strategy to reduce oil consumption. Presenters also identified the land use – transportation linkage, identifying "smart growth" strategies to address oil depletion.

To assist in the development of the RCP Energy Chapter, SCAG staff would coordinate an Energy Summit for early 2006. The general concept is to hold a half-day event to present information on energy supply and demand with a discussion of strategies to reduce demand. Speakers would represent various interests including, but not limited to, oil, gas, renewables, and alternative fuels.

FISCAL IMPACT:

The staff resources for coordinating the Energy Summit are contained within the FY 2005-2006 OWP. Any additional funds will be secured through sponsorships.

